

CALIFORNIA FISH AND GAME COMMISSION
STATEMENT OF PROPOSED EMERGENCY REGULATORY ACTION
Emergency Action to Amend Subsection (b)(178) of Section 7.50, Title 14,
California Code of Regulations
Re: Silver King Creek

I. Statement of Facts Constituting the Need for Emergency Regulatory Action

Current regulations prohibit fishing all year in Silver King Creek and tributaries including lakes above Llewellyn Falls. The current regulation is designed to protect the native Paiute cutthroat trout, which is listed as Threatened pursuant to the federal Endangered Species Act, by prohibiting angling in a portion of its existing range above Llewellyn Falls. Current trout fishing regulations for Silver King Creek and tributaries downstream of Llewellyn Falls provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling has been permitted downstream of Llewellyn Falls where nonnative trout exist.

The Department has proposed a Paiute cutthroat trout restoration project that involves removal of nonnative trout in the stream reach downstream of Llewellyn Falls to Snodgrass Creek. This stream reach constitutes the native range of Paiute cutthroat trout, one of the rarest trout subspecies. Natural barriers at the downstream end of the reach will prevent nonnative trout from naturally entering the recovery reach upstream of Snodgrass Creek.

Prohibiting angling within the treatment reach reduces the potential for anglers to transport undesirable fish into the recovery reach from downstream areas, which would jeopardize the native Paiute cutthroat trout recovery efforts. To promote rebuilding of a pure Paiute cutthroat trout population within native habitats it is essential that no other trout species are present. Also, an angling closure serves notice to anglers and others that the closed reaches of Silver King Creek are sensitive areas and important for the protection and recovery of Threatened Paiute cutthroat trout.

In July 2005, the State Water Quality Control Board issued the Department a National Pollutant Discharge Elimination System (NPDES) Permit. This permit, along with other associated State and Federal permits, authorizes the Department to conduct a chemical treatment at Silver King Creek and tributaries downstream of Llewellyn Falls. The treatment phase of this project is scheduled for late-August 2005, and an immediate closure to angling within the project area is needed to protect the integrity of the project and Paiute cutthroat trout recovery efforts.

In years past, the treatment project has been scheduled during late August to early September each year since 2003. During this time of year stream flows are at a minimum and water temperatures optimum to ensure a high level of success in removing all nonnative trout. Unfortunately, challenges to federal and State environmental documents and permits have delayed the project immediately prior to treatment during 2003 and 2004. Documents to amend sport-fishing regulations have been submitted to the Commission prior to each scheduled treatment and subsequently withdrawn because of project cancellation. Because of uncertainties involved with timing of issuance of the required NPDES permit for the scheduled 2005 treatment, the Department elected to submit Emergency Regulatory Action documents to close the section of stream being treated. The emergency action is justified as necessary for the protection, preservation, and conservation of a federally threatened fish species.

During the restoration period (estimated to require several years), the Department is proposing to prohibit angling in the recovery reach and tributaries, between Llewellyn Falls and Snodgrass Creek, to protect Paiute cutthroat trout and promote rebuilding of the population.

This proposed action is identified as one of the recovery criteria in the draft Recovery Plan for Paiute Cutthroat Trout, which is in review by the U.S. Fish and Wildlife Service. This project is supported by the U.S. Fish and Wildlife Service, U.S.D.A. Toiyabe National Forest, and Trout Unlimited. The Department's Heritage and Wild Trout Project views the proposed restoration reach as a potential Heritage Trout Water.

It is anticipated that when the fish population is restored, the Department will recommend to the Commission that the recovered fishery be considered as a designated Heritage Trout water.

II. Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

III. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business,

including the ability of California businesses to compete with businesses in other states. The proposed regulation affects a short stream reach in a remote wilderness area of northern California.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None
- (c) Cost Impacts on a Representative Private Person or Business: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

IV. Plain English Policy Statement:

It has been determined that the adoption/amendment of these regulations may affect small businesses. The Commission has drafted the regulations in Plain English pursuant to Government Code sections 11342(e) and 11346.2(a) (1).

V. Authority and Reference:

The Fish and Game Commission proposes this emergency action pursuant to the authority vested by Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, Fish and Game Code and to implement, interpret, or make specific Sections 200, 205, 206, 215 and 316.5, of said Code.

VI. Section 240 Finding:

Pursuant to Section 240 of the Fish and Game Code, the Commission made the finding that the adoption of this regulation is necessary for the immediate conservation, preservation, and protection of a native fish species designated as Threatened pursuant to the federal Endangered Species Act.

Informative Digest/Policy Statement Overview (Plain English Overview)

Current regulations for Silver King Creek and tributaries downstream of Llewellyn Falls provide for trout fishing from the last Saturday in April through November 15, with a five-fish daily bag limit and ten-fish possession limit. Angling is permitted downstream of Llewellyn Falls where nonnative trout exist and compete with native Paiute cutthroat trout.

The Department is proposing to prohibit angling in a planned restoration portion of Silver King Creek between Llewellyn Falls and Snodgrass Creek. The Department is scheduled to implement a Paiute cutthroat trout restoration project in Silver King Creek downstream of Llewellyn Falls to Snodgrass Creek that will eliminate nonnative trout and benefit native Paiute cutthroat trout. The proposed angling closure will protect Paiute cutthroat trout and promote rebuilding of the population.